IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO.6 OF 2004

1. Rajendra Singh Airen,)
S/o.Late Shri Ranjeet Singh,)
R/o.42/8, Nehru Nagar (East),)
Bhilai, Chhatisgarh.). Petitioner
(Org.Defendant)

Vs.

1. Shri Mahendra Singh Airen,)
Son of Late Shri Ranjeet Singh,)
7, Maple Drive, Port Washington,)
New York, 11050 U.S.A.)
through Shri Rakesh C.Bajpal)
Son of Late Shri C.K.Bajpal,)
R/o.15-D Saket Colony, Kotulbod,)
Durg, Chhatisgarh.)

2. Shri Narendra Singh Airen,)
S/o.Late Shri Ranjeet Singh,)
R/o 42/8, Nehru Nagar (East),)
Bhilai, Chhatisgarh.)

3. Smt.Maya Gupta,)
W/o.Dr.P.C.Gupta,)
5-Cha-28 Manu Marg,)
Housing Board Vinay Marg, Alwar,)
301001 Rajasthan.)

4. Smt.Asha Gupta,)
W/o.Dr.K.K.Gupta,
R/o.Polo Drive, Old Westbury,)
New york 11568, U.S.A.,). Respondents
(Org.Defendants)

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Shri Vineet Naik i/b M/s.Shah & Sanghavi for the petitioner.

Shri S.G.Karandikar for the respondent No.1.

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CORAM : R.M.S.KHANDEPARKAR, J

DATED : 4th NOVEMBER, 2004.

ORAL JUDGMENT :

1. Heard the learned advocates for the petitioner and the respondent No.1. Perused the records.

2. The petitioner challenges the order dated 17th October, 2003 passed by the Civil Judge, Senior Division, Palghar, in Special Civil Suit No.120 of 2002 rejecting the application filed under Section 9A of the Code of Civil Procedure, 1908, disputing the territorial jurisdiction of that Court to entertain the suit.

3. The facts in brief relevant for the decision are that, the respondent No.1 who is the plaintiff in the suit before the trial Court had filed the Suit No.904 of 2001 on the original side of this Court in March, 2001. The suit was for partition and separate possession of the properties. The petitioner being the defendant in the suit raised the objection regarding jurisdiction of this Court on the original side to entertain the suit on the ground that the properties are situated beyond the territorial jurisdiction of this Court. Consequently, the

respondent No.1 requested for return of the plaint to be presented in the Court of competent jurisdiction and by an order dated 29th October, 2002, on oral motion made by the respondent no.1, the plaint was ordered to be returned for presentation to the proper Court, and for that purpose, six week's time was granted to the respondent No.1. The respondent No.1 thereafter presented the plaint in the Court of Civil Judge, Senior Division, Palghar, within the specified time. The petitioner herein filed the application under Section 9A of the Code of Civil Procedure contending that the Civil Court at Palghar has no jurisdiction to entertain the plaint on two grounds, firstly that the respondent No.1 had carried out certain alterations in the original plaint in relation to the clause dealing with the jurisdiction of the Court as well as in the list of the properties annexed to the plaint, and secondly that the most of the properties in question are situated in the State of Madhya Pradesh, and therefore, beyond the territorial jurisdiction of the Civil Court at Palghar. The trial Court however referring to the provisions of Sections 17 and 18 of the Code of Civil Procedure rejected the contentions on behalf of the petitioner. Hence, the present petition.

4. The learned advocate appearing for the petitioner, drawing attention to the list of the properties appended to the original plaint filed in this Court as also paragraph 27 thereof and thereafter to the list of the properties annexed to the plaint submitted in the Court at Palghar as also paragraph 27 thereof, submitted that from the comparison of both the pleadings with the annexures in relation to the description of the properties disclose that the respondent No.1 after return of the plaint by this Court and while presenting the plaint in the Civil Court at Palghar had carried out certain changes in the said plaint and as the same was not permissible, the Court below erred in rejecting the application under Section 9A of the Code of Civil Procedure and deciding to proceed with the hearing of the suit. He further submitted that while dealing with the issue of territorial jurisdiction, the trial Court overlooked the provisions of Section 17 of the Code of Civil Procedure which speak of the jurisdiction of the Civil Court to entertain the suits in respect of the immovable properties only in case a portion of the property is situated within the local limits of jurisdiction of such Court. The list of the properties annexed to the plaint nowhere discloses a portion of the property as such being situated within

the territorial jurisdiction of the Civil Court at Palghar. On the contrary, most of the properties are situated within the State of Madhya Pradesh, besides as regards the property described at Item No.3 though is situated within the jurisdiction of the said Court, there is merely an allotment letter in respect of the same in favour of the respondent No.1.

5. The learned advocate for the respondent No.1, on the order hand, submitted that the plaint could not have been presented before the Court at Palghar unless it had disclosed on the face of it that at least one of the properties in question to have been situated within the territorial limits of the jurisdiction of the said Court, and therefore, necessary alterations in the jurisdiction clause in the plaint as well as in the description of the properties was required to be made and therefore the same were carried out before presentation of the said plaint in the said Court and that by itself cannot be a ground for dismissal of the suit. Attention was drawn to the decision of the Apex Court in the matter of **Hanamanthappa & Anr. v. Chandrashekharappa & Ors.,** reported in AIR 1997 SC 1307. As regards the second ground of challenge, it was sought to be contended that Section 17 of the Code of Civil Procedure clearly empowers the Court to

entertain the suit in relation to immovable properties, when any one of the properties which is the subject matter of the dispute, is situated within the territorial jurisdiction of the Court wherein the plaint is presented.

6. As regards the first ground of challenge, undisputedly, Order VII Rule 10 of the Code of Civil Procedure provides that subject to rule 10A, the plaint can be returned at any stage of the suit for the purpose of presentation thereof to the Court in which the suit should have been instituted. Sub-rule (2) of Rule 10 provides that on returning a plaint the Judge shall endorse thereon the date of its presentation and return, the name of the party presenting it, and a brief statement of the reasons for returning it. Rule 10A which came to be introduced by way of amendment in the year 1976 deals with the subject pertaining to the power of the Court to fix a date of appearance in the Court where plaint is to be filed after its return. Sub-rule (1) thereof provides that where, in any suit, after the defendant has appeared, the Court is of opinion that the plaint should be returned, it shall, before doing so, intimate its decision to the plaintiff. Sub-rule (2) thereof provides that where an intimation is given to

the plaintiff under sub-rule (1), the plaintiff may make an application to the Court specifying the Court in which he proposes to present the plaint after its return, further praying that the Court may fix a date for the appearance of the parties in the said Court, and requesting that the notice of the date so fixed be given to him and to the defendant. Sub-rule (3) thereof provides that where an application is made by the plaintiff under sub-rule (2), the Court shall, before returning the plaint and notwithstanding that the order for return of plaint was made by it on the ground that it has no jurisdiction to try the suit, fix a date for the appearance of the parties in the Court in which the plaint is proposed to be presented, and give to the plaintiff and to the defendant notice of such date for appearance. Sub-rule (4) provides that where the notice of the date for appearance is given under sub-rule (3), it shall not be necessary for the Court in which the plaint is presented after its return, to serve the defendant with a summons for appearance in the suit, unless that Court, for reasons to be recorded, otherwise directs, and the said notice shall be deemed to be a summons for the appearance of the defendant in the Court in which the plaint is presented on the date so fixed by the Court by which the plaint was returned.

7. The provisions of Rules 10 and 10A of Order VII of the Code of Civil Procedure, therefore, enjoin the Court ordering return of the plaint to take certain steps to avoid unnecessary delay in disposal of the suit. The provisions also disclose the intention of the legislature about certain precautions to be taken by the Court to avoid unnecessary inconvenience to the parties to the litigation, as well as avoidance of delay which may occur in the process and on account of return of the plaint and lodging of the said plaint again in the another Court. Sub-rule (2) of Rule 10 specifically provides that on returning a plaint the Judge shall endorse thereon the date of its presentation and return along with "a brief statement of the reasons for returning it." Obviously, the provision regarding a brief statement of the reasons for returning it would enable the Court receiving the plaint on such return by the Court returning it, to know the reasons for return of the plaint. The same would take care of assuring that the pleadings in the original plaint are not interfered with or interpolated or altered by the plaintiff while lodging the plaint in another Court. It is to be noted that in terms of the provisions of Rule 1 of Order VII, the plaint has to contain the various

particulars, and in terms of clauses (e) and (f) it should disclose the facts constituting the cause of action, when it arose, and the facts disclosing that the Court has jurisdiction. Obviously, the plaintiff has to make a statement in the plaint that the Court in which the plaint is presented has jurisdiction to entertain the suit. When such a plaint is returned to be presented in another Court if such a statement is not found in the plaint, then the Court receiving the plaint will not have advantage of having correct statement of fact relating to its jurisdiction to entertain the plaint, and therefore, the provisions of law comprised under Rule 10(2) of Order VII specifically require the Judge returning the plaint to record a brief statement of reasons while returning the same. Undoubtedly, sub-rule (2) uses the phraseology "shall endorse" by the Judge returning the plaint. But there can be situation where the Judge by oversight may not record such reason when it is returned to be presented in the Court of competent jurisdiction. Certainly, in such a case, if the plaint is presented without necessary alterations therein in respect of the jurisdictional clause, the Court receiving such plaint will be handicapped to know the real fact which has compelled the plaintiff to present the plaint in such Court after being

returned by another Court. It is to be noted that return of the plaint is not merely on the ground of lack of jurisdiction to entertain the plaint by the Court returning the plaint but it is essentially for the reason that some other Court is competent Court to entertain the same. In case of mere absence of jurisdiction, it is not necessary to return the plaint but the plaint can be rejected in terms of provisions comprised under Rule 11 of Order VII of the Code of Civil Procedure. But when the Court comes to a conclusion that the grievance of the plaintiff in the plaint needs to be entertained by another Court, which is competent Court to deal with the issue, certainly, it will be appropriate for such Court to exercise the power under Rule 10 and not under Rule 11, and therefore, it would be necessary to make an endorsement as to the Court which is competent to entertain the plaint so as to enable the plaintiff to present the plaint in such Court.

8. Considering the law on the point, therefore, in a case where the plaint is returned without any endorsement in terms of Rule 10(2) and if the plaintiff carries out necessary alterations in the plaint disclosing jurisdiction of the Court wherein the plaint is presented, it cannot be said that there

is any illegality committed by the plaintiff which could warrant a penalty of dismissal of the suit or rejection of the plaint. Undoubtedly, even in such cases, if the defendant raises the issue of lack of the jurisdiction of the Court in which the plaint is presented, the Court will be obliged to decide the same in accordance with the provisions of law. However, mere alterations in the jurisdiction clause in the plaint to disclose the jurisdiction of the Court wherein the plaint is presented after being returned by the earlier Court will not be to the advantage or the defendant to invite an order of dismissal of the suit or rejection of the plaint.

9. Undoubtedly, the return of the plaint does not entitle the plaintiff to carry out the alterations in the plaint in respect of any clause other than the jurisdiction or in relation to the Court fees in the plaint. Certainly, it would not entitled the party to introduce alterations in the description of the properties before the plaint being presented after its return by the earlier Court. Such alterations if required will have to be carried out after necessary leave in that regard being obtained by the Court of competent jurisdiction. Considering the same, the contention of the petitioner as regards the alleged

alterations in the description of the properties carried out by the respondent No.1 need to be considered in detail.

10. It is stated that the original plaint discloses the description in relation to the Item No.3 as under :-

> "Two flats purchased from ‘Shree Projects’ at Bombay as stated by defendant no.1 in the statement of accounts as on Nov/Dec 1999 in respect of ancestral property given on 28.11.99 to the plaintiff by defendant no.1."

The said item in the plaint presented in the Civil Court at Palghar reads as under:-

> "Two Flats bearing No.81-B-101 and 81-B-201 Purchased in Shri Prastha, Station Road, Nala Sopara West, Taluka Vasai, District: Thane."

It is not in dispute that the property described at Item No.3 in the plaint presented in the Civil Court, Senior Division, at Palghar, is situated within the territorial limits of District Thane. Once it is apparent on the face of the plaint that on return

thereof, it was presented in the Court at Palghar, on the basis that the Court at Palghar can entertain and deal with the matter in dispute and the same dispute pertains to partition of the properties but the description at the Item No.3 in the original plaint did not disclose the property within the territorial limits of the Court at Palghar, nor any other property in the list of the properties is situated within the territorial limits of the Court at Palghar, it was necessary for the plaintiff to describe the property at Sr.No.3 to be within the territorial limits of the District Thane. Whether on account of one of such properties being situated within the territorial limits of District Thane will entitle the plaintiff to file a suit in the Court at Palghar is totally a different issue. The point to be considered is in relation to the alterations in the plaint as regards the description of the property. As already observed above, there was no endorsement by the Court while returning the plaint in terms of the Rule 10(2) of Order VII of the Code of Civil Procedure. Being so, mere presentation of the original plaint could not have permitted the Civil Court at Palghar to entertain the plaint or to deal with the matter and therefore it was necessary for the plaintiff to disclose the facts in the plaint which can give jurisdiction to the said

Court to entertain the plaint. Being so, in the facts and circumstances of this case, it cannot be said that the plaintiff has acted illegally in carrying out the alterations in relation to the description of the property at Sr.No.3 in the list of properties annexed to the plaint and in the jurisdiction clause in the plaint. Certainly such alterations cannot warrant penalty of dismissal of the suit. Needless to say that at the same time, it cannot prevent the defendant from raising issue pertaining to the lack of jurisdiction and if so raised, the Court will have to deal with the same in accordance with the provisions of law but certainly mere alterations in the description of the properties and jurisdiction clause in the plaint in the facts and circumstances of the case and particularly when the Court returning the plaint had not made endorsement regarding reasons for returning of the plaint in terms of the provisions of Rule 10(2) of Order VII of the Code of Civil Procedure, in the peculiar set of facts of the case in hand, it may not be appropriate to find fault with the acts on the part of the respondent No.1 in carrying out the required alterations, as stated above.

11. The learned advocate for the respondent No.1 is also justified in drawing attention of this Court

to the ruling of the Apex Court in **Hanamanthappa's case (supra)** wherein it was observed that merely because certain averments were introduced in the original plaint while presenting the plaint in another Court, on such plaint being returned by the earlier Court for presentation thereof in the Court of competent jurisdiction, the same cannot be dismissed on the same ground of mere alterations being carried out in the plaint.

12. As regards the second ground of challenge, undoubtedly, most of the properties described in the list of properties are situated in the State of Madhya Pradesh with one property at Sr.No.3 which is situated within the territorial limits of the Court at Palghar. Section 16(d) to which reference was made by the learned advocate for the petitioner, undoubtedly, discloses that the suit for determination of any right to or interest in immovable property is required to be instituted in the Court within the local jurisdiction where the property is situated. At the same time, Section 17 provides that where a suit is to obtain relief respecting to immovable property situate within the jurisdiction of different Courts, the suit may be instituted in any Court within the local limits of whose jurisdiction any portion of the property is

situated. Referring to the expression "any portion of the property", it was sought to be argued that it is only in case of any portion of the property is situated within the territorial jurisdiction of the Civil Court at Palghar that would have empowered the said Court to entertain the suit and not otherwise. In the case in hand, according to the petitioners, no portion of any property is situated within the limits of the District Thane but as per the description of the property in Item No.3, both the flats are situated within the limits of District Thane but most of the properties are situated in the State of Madhya Pradesh, besides that the defendants also reside in the State of Madhya Pradesh.

13. Section 13 of the Bombay General Clauses Act, 1904 clearly provides that unless there is anything repugnant, the words in the singular shall include the plural, and vice-versa. Similarly, Section 13 of the General Clauses Act, 1897 also provides that unless there is anything repugnant, the words in the singular shall include the plural, and vice versa. Obviously, the expression "property" in Section 17 would also include "properties". Being so, any portion of the properties if situated within the territorial limits of the jurisdiction of the Civil Court at Palghar,

would empower the said Court to entertain the suit for partition in respect of the properties which are situated even beyond the jurisdiction of the said Court. The expression "portion" cannot be related to a part of any particular singular property as such. The expression has to be understood to mean any one of the properties when there are more than one properties being subject of partition. Being so, it is also to be noted that the provision is in relation to the procedure meant for enforcing the right in relation to the immovable property. Being so, the provision has to be understood bearing in mind that the same is to help the parties to approach the Court to obtain a just and appropriate relief in relation to the disputes between the parties, and such provisions are not to be interpreted to create unnecessary and unwarranted hurdles in exercise of legitimate right of the parties in relation to the immovable properties. Bearing the same in mind, the expression "any portion of the property" in Section 17 will have to be understood to include a piece of independent property amongst various properties which are subjected to the partition in the suit.

14. For the reasons stated above, therefore, the order of the Court below dismissing the application

under Section 9A of the Code of Civil Procedure cannot be found fault with.

15. For the reasons stated above, therefore, the petition fails and is hereby dismissed. The rule is discharged accordingly with no order as to costs.